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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARMELITA LAPITAN ASUNCION,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-73226

Agency No. A97-368-220

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Carmelita Lapitan Asuncion, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's ("IJ") decision denying her a continuance. We have

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo claims of due process violations, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008), and we deny the petition for review.

The agency did not err in denying Asuncion's motion for a continuance because the IJ previously granted a six-month continuance and Asuncion's eligibility for an S Visa remained speculative at the time of her March 17, 2005 hearing. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (to prevail on a due process challenge, an individual must show error and substantial prejudice); *see also Sandoval-Luna*, 526 F.3d at 1247 (no prejudice where IJ denied a continuance because relief was only speculatively available).

PETITION FOR REVIEW DENIED.